

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

OWNER-OPERATOR INDEPENDENT)	
DRIVERS ASSOCIATION,)	
WOOD-CHUCK LEASING INC,)	CAUSE NO. IP98-0457-C-B/S
DUDGEON, MARK,)	
ANNE WEBER-NEIDIG AS PERSONAL)	
REPRESENTATIVE OF THE ESTATE OF)	
JOHN E NEIDIG INDIVIDUALLY AND)	
ON BEHALF OF ALL OTHERS)	
SIMILARLY SITUATED,)	
OWEN, WILLIAM H REPRESENTATIVE)	
PLAINTFF ADDED 3/29/05,)	
CORWIN SR, TIMOTHY P)	
REPRESENTATIVE PLAINTFF ADDED)	
3/29/05,)	
)	
Plaintiffs,)	
vs.)	
)	
MAYFLOWER TRANSIT INC!,)	
)	
Defendant.)	

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

OWNER-OPERATORS INDEPENDENT)	
DRIVERS ASSOCIATION, INC., et. al.,)	
)	
Plaintiffs,)	CAUSE NO. IP 98-457-C B/S
)	CAUSE NO. IP 98-458-C B/S
vs.)	
)	
MAYFLOWER TRANSIT, INC.,)	
)	
Defendant.		

ENTRY REGARDING MOTION TO COMPEL AND FOR SANCTIONS

This cause is before the magistrate judge on the plaintiffs' Motion to Compel Defendant to Produce Copies of Agent Lease Agreements and for Award of Sanctions. The motion is fully briefed, and the magistrate judge, being duly advised, **GRANTS IN PART AND DENIES IN PART** the motion to the extent and for the reasons set forth below.

On October 20, 1998, in ruling on a motion to compel that was filed by the plaintiffs early in these cases, the magistrate judge ruled as follows:

[D]efendant argues that it does not have possession or control of many of the requested documents. The magistrate judge agrees that defendant does not have possession or control of documents simply because the documents are possessed by defendant's agents, nor do the federal regulations cited by plaintiffs mean that defendant has the legal right to obtain the requested documents from its agents. Accordingly, as to those documents which belong to defendant's independent agents, defendant's objection is sustained, and plaintiffs must obtain those documents by means of third party discovery.

Among the documents at issue at that time were lease agreements entered into between the defendant's hundreds of independent agents and owner-operators ("the leases"). Recently, the defendant has obtained some of these leases and has filed 18 of them in redacted form in

response to the court's request for additional briefing on the class certification issue. In the instant motion, the plaintiffs ask that: (1) the defendant be compelled to produce the 18 leases in unredacted form; and (2) the magistrate judge reconsider her original ruling and order the defendant to obtain all of the leases from its agents.

As to the first issue, while the magistrate judge held that the defendant was not required to obtain the leases from its independent agents because those leases were not in the defendant's possession or control, it clearly must produce all of the leases that are, in fact, in its possession or control. Those leases are relevant, discoverable, and subject to an outstanding discovery request. Accordingly, the defendant immediately shall produce unredacted copies of all of the leases that are currently in its possession and all of the leases that have been in its possession at any time since these cases were filed, and shall produce any additional leases that may come into its possession during the remainder of these cases.

As to the second issue, the magistrate judge has considered the plaintiffs' arguments regarding "the record that has been developed in this litigation since 1998," but remains unconvinced that all of the leases are in the control of the defendant. To the extent that the defendant obtains any of the leases from its agents (or from any other source, for that matter) for its own purposes, it must, as part of its ongoing duty to supplement its discovery responses, produce those leases to the plaintiffs, but the magistrate judge declines to require the defendant to obtain the remainder of the leases on behalf of the plaintiffs.

Finally, consideration of the plaintiffs' request for sanctions is deferred until the conclusion of this litigation.

SO ORDERED:

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